



MEMORANDUM

TO: District of Columbia Board of Zoning Adjustment

FROM: Jennifer Steingasser, Deputy Director Development Review & Historic Preservation

DATE: April 6, 2010

SUBJECT: BZA Case No.18050 - 4139 Wheeler Road, S.E.
(Square 5925 – Lot 821)

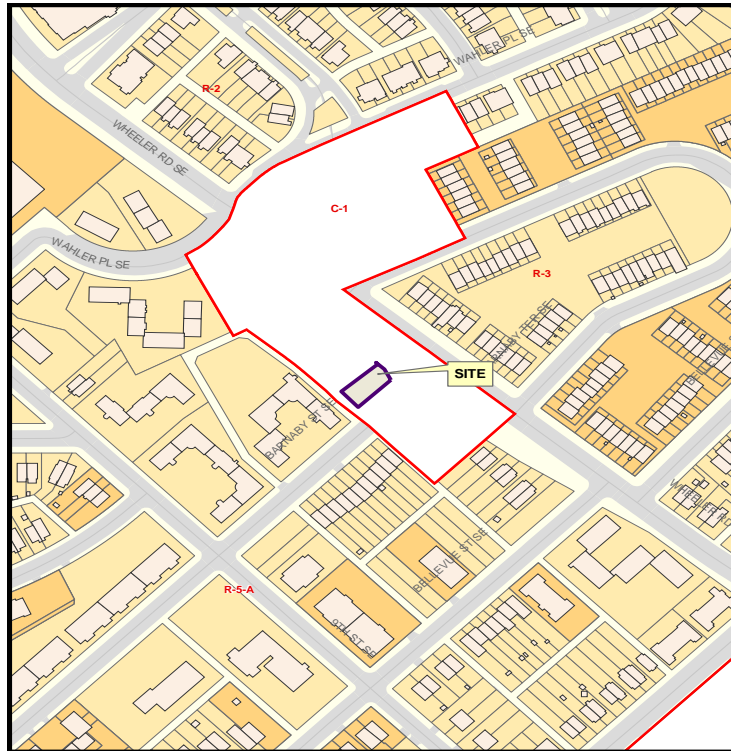
I. SUMMARY RECOMMENDATION

The Office of Planning (OP) recommends **approval** of the requested use variance to allow the continued use of the property for a fast food establishment within a C-1 district.

II. AREA AND SITE DESCRIPTION

Address:	4139 Wheeler Road, S.E.
Legal Description:	Square 5925, Lot 821
Ward:	8, ANC-8E
Lot Characteristics:	The lot on which the subject business is located fronts on Wheeler Road, SE at its intersection with Barnaby Street, SE. To the rear of the lot is a 15-foot wide improved alley. The lot has an area of 22,146 square feet.
Existing Development:	The lot is developed with a shopping center with space to house 4 businesses. Currently, only two businesses are in operation and the other two storefronts have been vacant for approximately 5 years. The subject building is a fast food establishment.
Historic District:	N/A
Zoning:	C-1 – A Neighborhood Shopping District designed to provide convenient retail and personal service establishments for the day-to-day needs of a small tributary area, with a minimum impact upon surrounding residential development.
Adjacent Properties:	To the north and west of the site are 2-story row-houses in the R-3, R-2, R-5-A and C-1 districts; to the east is the True Gospel Tabernacle Baptist Church in the C-1 district; and to the south are 2-story apartment buildings in the R-5-A district.
Surrounding Neighborhood Character:	The surrounding community is a mixture of residential unit types comprised of low rise apartments, row-houses, duplexes and single-family detached houses surrounding the small retail node. The residentially zoned properties on the square are separated from the C-1 zone by an alley.





Site Location



Aerial Photograph



Front Elevation from Wheeler Road/Barnaby Street corner.

III. APPLICATION IN BRIEF:

The applicant is seeking a use variance, pursuant to §3103, from the requirements of Section 701.1 to allow the continuation of a fast food establishment use in a C-1 zone. The property and building has been occupied and in use as a fast food establishment (carryout) since at least 1995. The applicant is not proposing any structural changes either internally or externally to the building and therefore does not seek relief for any structural alterations, nor any expansion of uses or services offered.

IV. BACKGROUND

The allowance of fast food or carry-out uses in the Zoning Regulations has been modified over the years. Prior to 1985, the Regulations permitted “restaurants” of all types as a matter-of-right in the C-1 through M districts. On May 13, 1985, the Regulations were amended by adding the “fast food restaurant” definition (ZC, Case No. 83-6, Order No. 460). On September 28, 2007, the Regulations were again amended by deleting “fast food restaurants” and adding the “fast food establishment” definition (ZC Order No. 06-23). This change led to the use of the subject site being defined as a fast food establishment not permitted in this zone, and subsequent denial of a new Certificate of Occupancy by of the Zoning Administrator as a non-permitted use in a C-1 district.

The use of the property in the C-1 zone over time is summarized below.

TABLE 1

USE	DATE CERTIFICATE OF OCCUPANCY ISSUED
Grocery and Meat Market	August 1948
Retail Food Store	September 1950
Retail Food Store	August 1952
Retail Food and Beverage Store	April 1967
Restaurant Carry-out with seating for 74	December 23, 1981
Restaurant with seating for 74	October 18, 1984
Restaurant with seating for 74	March 22, 1988
Delicatessen with no seating	February 26, 1992
Carry-out with no seating	July 19, 1995
Carry-out with no seating	August 26, 1997
Carry-out with no seating	November 12, 1998
Carry-out with no seating	April 24, 2001
Carry-out, Delicatessen	July 29, 2003

Based on a review of the C of O, the site has operated as either a restaurant or carry-out since 1981 and the use of the building changed from a conforming to non conforming use in 2002. The existing fast food establishment currently operates under a temporary C of O which expires on July 19, 2010. A new C of O was necessary due to a change in ownership.

V. ZONING REQUIREMENTS and REQUESTED RELIEF

The property is located in a C-1 district which does not allow “fast food establishment” as a matter-of-right use. Section §199.1 of the Zoning Regulations define fast food establishments as:

***Fast food establishment** - a place of business, other than a “prepared food shop,” where food is prepared on the premises and sold to customers for consumption and at least one of the following conditions apply:*

- (a) The premises include a drive-through;*
- (b) Customers pay for the food before it is consumed. One characteristic that would satisfy this element would be building permit plans that depict a service counter without seating unless the applicant certifies that the intended principal use is for a restaurant or grocery and that the counter is part of a carry out service that is clearly subordinate to that principal use; or*
- (c) Food is served on/in anything other than non-disposable tableware. Characteristics that would satisfy this element include, but are not limited to: the building permit plans do not depict a dishwasher or do depict trash receptacles in public areas.*

Within the existing establishment, food is prepared and sold to customers for consumption off-site. Patrons may telephone their orders or come to the site and place orders for food. The food is then picked up from the establishment or is delivered to the patrons. The applicant states that there are three employees (family members) one of which will be assigned to make deliveries.

Photographs provided by the applicant show tables and chairs between the entrance and the counter; however, no eat-in service is provided. The applicant states that the tables were provided as a

courtesy to patrons while they await service. The applicant has stated that the tables will be removed but some chairs would be retained for patrons use while they await service. There is an interior window and counter to exchange food and money. The establishment therefore is defined as a fast food restaurant and needs a use variance.

VI. OFFICE OF PLANNING VARIANCE ANALYSIS

The following is an analysis of how the proposal meets the variance requirements:

The property is unique by reason of its exceptional narrowness, shallowness, shape, topography or other exceptional situation or condition...

The property is unique due to an extraordinary or exceptional situation due to its pre-existing, non-conforming use. The existing shopping center and its retail shop were clearly constructed for commercial purposes and the space has been configured for a fast food establishment.

By reason of the aforementioned unique or exceptional condition of the property, the strict application of the Zoning Regulations will result in peculiar and exceptional practical difficulties or to exceptional and undue hardship upon the owner of the property.

The applicant is operating the establishment similar to the prior owners. Even though the regulations changed in 1985, the carryout use was granted up to 2003. Therefore, it appears the current use of the space as a carryout establishment is not inconsistent with the permission granted since 1995. OP staff has visited the site to assess the existing conditions and observed that the counter and register is located approximately six feet behind the front entrance. The area between the entrance and the counter is mainly for queuing of customers. A full commercial kitchen takes up the majority of the of the square foot space of the building.

The property's history and its physical layout, specifically the interior window and counter to exchange food and money and large commercial kitchen makes it evident the area was intended to be used as a carryout or fast food establishment. As such, converting the space to a use permitted by-right in the C-1 district would pose an undue practical and economic hardship upon the owner of the business and property.

Can the relief be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the Zoning Regulations and Map?

The fast-food restrictions are primarily to address potential impacts of such uses on adjacent residential properties. The proposed use would not be a substantial detriment to the public good as the building does not directly abut a residential building, but is separated from the R-5-A district and the adjacent apartments by a 15-foot wide alley. Additionally, the apartments are setback approximately 20 feet from the edge of the alley. The rear yard of the establishment is fenced with a 6-foot high metal fence and encloses the trash receptacle. Trash is picked up twice per week by a private contractor and on the day of OP's visit the surrounding area was clean and free of debris. The property has shared parking for customers of the entire commercial strip along Wheeler Road frontage and would not necessitate patrons parking along residential streets when they visit the

establishment. Maintaining the proposed use on the subject property would enhance the public good as the building already has two vacant storefronts. The closing of this use could lead to further deterioration of the building and the area could become a blight in the community. The intent, purpose and integrity of the Zoning Regulations and Map would not be substantially impaired given the commercial character of the intersection and the on-going fast food use of the space.

VII. COMMUNITY COMMENTS

The subject property is within the boundary of Advisory Neighborhood Commission 8E. To date, OP has not been informed of any action taken on this application.

VIII. CONCLUSION AND RECOMMENDATION

The existing fast food establishment has existed at this location for an extended period of time and has been a nonconforming use in this district. The standards for use variance have been met. The Office of Planning therefore recommends **approval**.

JLS/Project Manager: Maxine Brown-Roberts